

From: <Catherine_Callaway@ios.doi.gov>
To: Randal_Bowman@ios.doi.gov
Subject: DCN: EST-00002396 - Antiquities Act reform
Date: Tuesday, June 06, 2017 11:40:45 AM
Attachments: [EST 2396.pdf](#)

Randy - Exec Sec didn't send this one to you, but it should be with you.

Cathy Callaway - PMB (202) 208-1927



Bob Ferguson

ATTORNEY GENERAL OF WASHINGTON

1125 Washington Street SE • PO Box 40100 • Olympia, WA 98504-0100

005175

May 11, 2017

The Honorable Ryan Zinke
Secretary, U.S. Department of the Interior
1849 C Street NW
Washington, DC 20240

Dear Secretary Zinke:

A man we both admire, Theodore Roosevelt, wrote: "We have fallen heirs to the most glorious heritage a people ever received, and each one must do his part if we wish to show that the nation is worthy of its good fortune." I write to strongly urge you and the President to faithfully execute your delegated authority under the Antiquities Act of 1906, and refrain from revoking or altering the well-considered National Monument designations in the State of Washington and elsewhere.

As you are aware, the Antiquities Act of 1906 is the cornerstone of American conservation. Signed and applied extensively by President Roosevelt, the Antiquities Act has been instrumental in the conservation and public enjoyment of some of our most treasured places, including Olympic, Grand Canyon, Zion, Teton, and Acadia National Parks. In fact, in more than 150 instances, presidents of both parties have used the Antiquities Act to designate national monuments from existing federal lands. These designations protect some of the most beautiful and culturally significant lands in the country, and provide a significant economic benefit to surrounding communities.

Given the benefit the national monuments established under the Antiquities Act have provided the people of the United States, I read with great concern President Trump's Executive Order on the Review of Designations Under the Antiquities Act.

In short, the President and the Secretary of the Interior lack the legal authority to revoke or reduce a National Monument designation. The Antiquities Act delegates a portion of Congress's power under Article IV, section 3 of the Constitution (the Property Clause) to the President so that important sites can be designated through a careful and guided evaluation process. Congress, as always, retains the ability to revoke or alter a National Monument designation and, in fact, has exercised that authority. No President, however, has ever claimed the authority to revoke National Monument status. It also would contravene later congressional action.

Until now, the permanence of a Presidential proclamation establishing a national monument was a settled question; even the public website for the Hanford Reach National Monument highlights the fact that the Hanford Reach is "now protected forever." (https://www.fws.gov/refuge/hanford_reach/, visited on May 10, 2017). Any interpretation of the Antiquities Act or of Presidential authority that would call that permanence into question is unwise – and unlawful.

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Similarly, the President and Secretary lack the authority to reduce a previously established National Monument. Congress made this clear in the Federal Land Policy and Management Act of 1976. This is especially true where, as in the case of Monuments in Washington State, the boundaries of the Monument were clear and well-established at the time of their creation, and the President exercised his considered judgment that the areas protected were “the smallest area compatible with the proper care and management of the objects to be protected.” See, e.g., 65 Fed. Reg. 37254 (June 9, 2000) (proclamation establishing the Hanford Reach National Monument); 78 Fed. Reg. 18789 (March 25, 2013) (proclamation establishing the San Juan Islands National Monument).

As a result, the State of Washington has grave concerns with any interpretation of Executive Order 13792 that implies that the President or Secretary has the authority to revoke or reduce past National Monument proclamations. Executive Order 13792 directs the Secretary of the Interior to review certain National Monuments designated or expanded under the Antiquities Act of 1906. Although the Executive Order focuses on designations of over 100,000 acres since 1996, it is broader in scope. The Interior Department’s May 5, 2017 list of Monuments under review expressly includes the Hanford Reach National Monument, created in 2000. But by its plain language, the Order also permits the Secretary to review any other recent designation that he believes “was made without adequate public outreach and coordination with relevant stakeholders.” Thus, the Order may also apply to the San Juan Islands National Monument, created in 2013. I urge you to maintain this designation for these unique and irreplaceable lands.

The Hanford Reach National Monument, established on June 9, 2000, is a haven for important and increasingly scarce objects of scientific and historic interest. It is a biological treasure, embracing important riparian, aquatic, and upland shrub-steppe habitats that are rare or in decline in other areas. It includes the 51-mile-long Hanford Reach, the last free-flowing, nontidal stretch of the Columbia River. It is also important wintering habitat for bald eagles, white pelicans, and many species of waterfowl. Fossil remains from rhinoceros, camel, and mastodon, among others, have been found in the area of the Monument known as the White Bluffs. Elsewhere, the Monument contains important archaeological and historical information, including evidence of concentrated human activity going back 10,000 years. Hundreds of prehistoric archaeological sites have been recorded there.

All of these precious resources have been protected by the National Monument designation. And they have been managed by the U.S. Fish and Wildlife Service in concert with important public access to the site, including fishing, hunting, boating, and other recreational activity. And, of course, the Hanford Reach National Monument offers a stunning view of the Hanford Nuclear Reservation, a testament to American ingenuity and arguably one of the greatest engineering feats ever accomplished.

Designations such as Hanford also carry significant, positive impacts to surrounding communities. According to a report by Headwaters Economics, a nonprofit research firm based in your home state of Montana:

“Research shows that conserving public lands like the Hanford Reach National Monument helps to safeguard and highlight amenities that draw new residents, tourists, and businesses to surrounding communities. Western counties with protected public lands, like national monuments, have been more successful at attracting fast-growing economic sectors and as a result grow more quickly, on average, than counties without protected public lands. In addition, protected natural amenities – such as the pristine scenery found at Hanford Reach – also helps sustain property values and attract new investment.”¹

¹ <http://headwaterseconomics.org/wp-content/uploads/Hanford.pdf>

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The Hanford Reach National Monument designation came after years of outreach and public debate about how best to conserve and manage the area. The Secretary of Interior personally visited the site and heard from county officials and the public at an open meeting in Richland, Washington about the possible Monument designation. By any measure, the Hanford Reach National Monument was established with ample public outreach and coordination with relevant stakeholders.

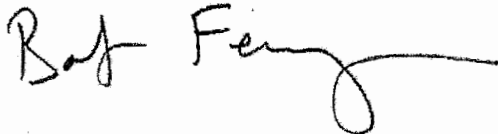
Similarly, the San Juan Islands National Monument, established on March 25, 2013, is an essential component of our public lands in a different way. San Juan Islands National Monument forms an unmatched landscape of contrasts. Numerous wildlife species can be found there, thriving in the diverse habitats supported by the islands. The presence of archeological sites, historic lighthouses, and a few tight-knit communities testifies that humans have navigated this rugged landscape for thousands of years. These lands are a refuge of scientific and historic treasures and a classroom for generations of Americans. The creation of the National Monument has allowed the Bureau of Land Management to conserve these resources for their own sake, and for ours – including great fishing, kayaking, hiking, camping, and wildlife viewing.

These National Monuments, like the others around the country that are the subject of the President's Executive Order, must be protected. The "most glorious heritage" that President Roosevelt invoked is only ours if we stand ready to fight for it. For our part, my team at the Washington State Attorney General's Office will be ready to act if necessary.

Let me be clear: If the President seeks to do harm to Washington's National Monuments by eliminating or reducing them, my office will initiate litigation to defend them.

I hope we can avoid that conflict. In that spirit, I invite both you and the President to join me in a visit to Washington's Hanford Reach National Monument and San Juan Islands National Monument. I hope you and the President have already had a chance to visit Washington's National Monuments. If not, when you see these treasured lands up close, I am confident you will agree that any alteration to their Monument status or to their boundaries is not only unlawful, but unwise.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Ferguson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

BOB FERGUSON
Washington State Attorney General

RWF/jlg



Howarth, Robert <robert_howarth@ios.doi.gov>

FW: Letter from Washington State Attorney General Bob Ferguson

1 message

EXSEC EXSEC <exsec_exsec@ios.doi.gov>
To: Robert Howarth <robert_howarth@ios.doi.gov>

Mon, May 15, 2017 at 3:49 PM

From: Gaul, Judy (ATG) [mailto:JudyG@ATG.WA.GOV]
Sent: Thursday, May 11, 2017 2:38 PM
To: 'exsec@ios.doi.gov' <exsec@ios.doi.gov>
Subject: Letter from Washington State Attorney General Bob Ferguson

Attached please find a letter from Attorney General Ferguson to Secretary Zinke. Thank you.

Sincerely,

Judy Gaul

Executive Assistant to Attorney General Bob Ferguson

State of Washington

Ph: (360) 664-9083 | Email: judyg@atg.wa.gov



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